CLERK'S COPY. 2631

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 223.

EUGENE C. GORDON, FOR THE USE OF MARY G. ROBEY, PLAINTIFF IN ERROR,

vs.

ARTHUR E. RANDLE.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 30, 1899.

(18,855.)

(18,385.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 229.

EUGENE C. GORDON, FOR THE USE OF MARY G. ROPER, PLAINTIFF IN ERROR,

vs.

ARTHUR E. RANDLE.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from supreme court of the District of Columbia	*b*	1
Caption	*b*	1
Amended declaration	1	1
Motion to strike amended declaration from files	3	3
Motion to strike amended declaration from files overruled	4	4
Pleas	5	4
Affidavit of defendant	6	5
Joinder of issue	7	6
Rejoinder and demurrer	8	6
Demurrer sustained	9	7
Joinder of issue on fourth plea	9	7
Motion to require defendant to produce certain papers at trial	10	8
Memorandum: Verdict for defendant	10	8
Judgment, appeal, and amount of appeal bond fixed, with leave to make deposit in lieu thereof	10	8
Memorandum: $50 deposited in lieu of appeal bond	10	8

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 3, 1903.

	Original.	Print
Notice of time of settlement of bill of exceptions	12	9
Stipulation as to filing bill of exceptions	12	9
Memorandum: Bill of exceptions filed as per stipulation	13	10
Order for preparation of record	13	10
Clerk's certificate	14	11
Petition for writ of mandamus	16	11
Submission of petition	20	14
Order for oral argument	20	14
Argument of petition	21	14
Order denying petition for writ of mandamus	21	14
Order allowing writ of error	22	15
Writ of error	23	15
Order approving bond	24	15
Bond on writ of error	25	16
Citation and service	26	17
Order for record	27	17
Clerk's certificate	28	18

a

Transcript of Record.

Court of Appeals, District of Columbia, January Term, 1901.

EUGENE C. GORDON, for the Use of MARY G. ROPER, Appellant, *vs.* ARTHUR E. RANDLE. } No. 1063.

Appeal from the Supreme Court of the District of Columbia.

Filed February 23, 1901.

b

Supreme Court of the District of Columbia.

EUGENE C. GORDON, for the Use of MARY G. Roper, *vs.* ARTHUR E. RANDLE. } No. 40958. At Law.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss:*

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1

Amended Declaration, &c.

Filed April 27, 1897.

In the Supreme Court of the District of Columbia, the 20th Day of April, 1897.

EUGENE C. GORDON, for the Use of MARY G. Roper, Plaintiff, *vs.* ARTHUR E. RANDLE, Defendant. } No. 40958. At Law. Docket No. 45.

1. The plaintiff sues the defendant for money payable by the defendant to the plaintiff for that, on the twentieth day of April 1892 the defendant Arthur E. Randle by the name of A. E. Randle, made a certain promissory note now overdue, and thereby promised to pay to the order of the plaintiff Eugene C. Gordon by the name of E. C. Gordon, for the benefit of Mrs. Mary G. Roper, on or before the twentieth day of April 1893, twenty-five hundred dollars ($2500) with interest thereon at the rate of six per centum per annum until paid, and payable at the Bank of Athens, Alabama, that at its maturity the said note was duly presented for payment, and was dishonored; notwithstanding which the said note has not been paid.

2. And the plaintiff also sues the defendant for money payable by the defendant to the plaintiff for that on the twentieth day of April 1892 the defendant Arthur E. Randle by the name of A. E. Randle made a certain promissory note now overdue and thereby promised to pay to the order of the plaintiff Eugene C. Gordon by the name of E. C. Gordon for the benefit of Mrs. Mary G. Roper on or before the twentieth day of April 1894, thirty-four hundred dollars with interest thereon at the rate of six per centum per annum until paid and payable at the Bank of Athens Alabama, that at its maturity the said note was duly presented for payment and was dishonored notwithstanding which the said note has not been paid.

2 3. And for money payable by the defendant to the plaintiff for goods bargained and sold by the plaintiff to the defendant; and for goods sold and delivered by the plaintiff to the defendant; and for work done and materials provided by the plaintiff for the defendant at his request and for money lent by the plaintiff to the defendant; and for money paid by the plaintiff for the defendant at his request; and for money received by the defendant for the use of the plaintiff; and for money found to be due from the defendant to the plaintiff on accounts stated between them.

And the plaintiff claims fifty-nine hundred dollars ($5900) with interest at the rate of six per cent. per annum from the twentieth day of April 1892 until paid, according to the particulars of demand hereto annexed, besides costs of this suit.

S. HERBERT GIESY,
Attorney for Plaintiff.

The defendant is to plead hereto on or before the twentieth day exclusive of Sundays and legal holidays occurring after the day of the service hereof; otherwise, judgment.

S. HERBERT GIESY,
Attorney for Plaintiff.

Particulars of Demand.

Note dated April 20, 1892 and payable on or before the 20th day of April 1893 with interest at 6 % per annum until paid	$2500
Note dated April 20, 1892 and payable on or before the 20th day of April 1894 with interest at 6 % per annum until paid	3400
	$5900

Also interest at 6 % per annum from April 20th, 1892 to date of judgment.

3 *Affidavit.*

DISTRICT OF COLUMBIA, *To wit:*

S. Herbert Giesy swears that he is the attorney for the plaintiff named in the declaration to which this affidavit is attached, and

which is referred to and made a part of this affidavit; that the plaintiff's cause of action therein is for two promissory notes given for value received and still unpaid though due and the sum of fifty-nine hundred dollars ($5900) with interest, as therein claimed, is justly due and owing to the plaintiff from the defendant by reason of the premises, exclusive of all set-offs and just grounds of defense.

S. HERBERT GIESY.

Subscribed and sworn to before me this 20" day of April, 1897.

JOHN R. YOUNG, *Clerk.*

Endorsed.

Leave to amend the declaration, and to file amended declaration and notice to plead and defendant to plead within 20 days thereafter.

L. E. McCOMAS,
Associate Justice.

Motion to Vacate Leave to Amend, &c.

Filed May 10, 1897.

In the Supreme Court of the District of Columbia.

E. C. GORDON, for Use of MARY G. ROPER, Plaintiff,
vs.
ARTHUR E. RANDLE, Defendant. } No. 40958. Law.

Now comes the defendant in the above-entitled cause and moves the court to vacate the leave to amend granted the plaintiff
4 therein, and to strike from the files the amended declaration, on the ground that the motion for said leave to amend was without notice to the defendant or his counsel.

J. J. DARLINGTON,
Attorney for Defendant.

Please take notice that the foregoing motion will be presented to circuit court No. 2, Mr. Justice McComas, presiding, on Friday, the 14th day of May, A. D. 1897, at 10 o'clock a. m., or so soon thereafter as counsel can be heard.

J. J. DARLINGTON,
Attorney for Defendant.

Supreme Court of the District of Columbia.

FRIDAY, *May* 28, 1897.

Session resumed pursuant to adjournment, Mr. Justice McComas, presiding.

* * * * * * *

E. C. GORDON, Use of MARY G. ROPER, Plaintiff,
vs.
ARTHUR E. RANDLE, Defendant.
} At Law. No. 40958.

Upon hearing the motion to strike the amended declaration herein from the files, it is considered that said motion be, and the same is, hereby overruled, with leave to defendant to plead within twenty days.

5 *Pleas.*

Filed June 12, 1897.

In the Supreme Court of the District of Columbia.

EUGENE C. GORDON, for Use of MARY G. Roper, Plaintiff,
vs.
ARTHUR E. RANDLE, Defendant.
} No. 40958. At Law.

1. The defendant, Arthur E. Randle, for plea to the plaintiff's declaration in the above-entitled cause, says that he did not promise as alleged.

2. For further plea to the said declaration, the defendant says he is not indebted as is alleged.

3. And, for further plea to the said declaration, the defendant says that the plaintiff's cause of action did not accrue within three years before suit brought.

4. And, for further plea to the plaintiff's declaration, the defendant says that the consideration for the promissory notes sued upon in said declaration was the conveyance by the plaintiff to the defendant of the Stansbury Mill property located in Carrollton, Mississippi, upon an agreement between the plaintiff and the defendant, under the name of the Delta and Wolien Cotton Mill and Land Company that the defendant should incorporate the same, issue bonds of the said corporation, and that the plaintiff would take said bonds to the amount of $9,000, sufficient to discharge the said notes, and, also, a mortgage, of $2,500 and accrued interest aggregating about $3,000 constituting an encumbrance upon said property; that the plaintiff, did, accordingly, subscribe in writing for $9,000 of the said bonds, to be taken, and paid for by him, when issued, by cancellation and surrender of the said notes and removal and discharge of the said mortgage debt; that the defendant, in pursuance of the

said agreement between them, did incorporate the Delta
6 Cotton and Wollen Mill and Land Company, tendered to the plaintiff $9,000 of the bonds of said company duly issued, for which the said plaintiff had subscribed as aforesaid, but the said plaintiff refused to accept the same, and they are still held by this defendant for said plaintiff and subject to his order, upon cancellation and surrender by him of the said promissory notes and discharge of the said mortgage.

J. J. DARLINGTON,
Att'y for Def't.

Filed June 12, 1897.

DISTRICT OF COLUMBIA, *ss:*

I, Arthur E. Randle, on oath say that I am the defendant in the above-entitled law cause No. 40,958 at law; that, of the two promissory notes described in the plaintiff's declaration, the first became due and payable, and that the plaintiff's cause of action thereon, if he ever had any, accrued more than a year before the filing of the original declaration in this cause, and that the second of said notes matured more than three years before the filing of the amended declaration herein. I further on oath say that the consideration of both of the said promissory notes was the conveyance by the plaintiff to me of certain property in Carrollton, Mississippi, then known as the Stansbury cotton mill, under an agreement between the plaintiff and this defendant that I should incorporate the Delta Cotton and Wollen Mill and Land Company, which should own the said property, and that the plaintiff would subscribe for $9,000 of bonds to be issued by the said corporation, which bonds he should pay for by the cancellation and surrender of the said promissory notes, and the discharge by him of a mortgage which then existed upon said property of $2,500 and accrued interest thereon, in all about $3,000; that, in pursuance of the said contract and agreement between us, I duly caused the said company *to* be incorporated and bonds to be issued,
$9,000 of which bonds was by me duly tendered to the said
7 plaintiff, who, however, refused to comply with his part of the said contract, and to take the said bonds; that I still hold them, subject to his order, upon the cancellation and surrender by him to me of the said promissory notes, and the discharge of the said mortgage upon said property; and that, to the best of my knowledge and belief I am not jointly indebted to the plaintiff in the sum claimed by him in his said declaration or in any other sum or sums whatsoever.

ARTHUR E. RANDLE.

Subscribed and sworn to before me this 12th day of June, A. D. 1897.

RUTLEDGE WILLSON,
Notary Public. [SEAL.]

Joinder of Issue.

Filed December 15, 1897.

In the Supreme Court of the District of Columbia.

EUGENE C. GORDON, for the Use of MARY G. Roper, Plaintiff,
vs.
ARTHUR E. RANDLE, Defendants. } At Law. No. 40958.

1. The plaintiff joins issue upon the defendant's first plea.
2. The plaintiff joins issue upon the defendant's second plea.
3. The plaintiff says that the note for $3400 and interest at 6 % dated the 20th day of April 1892 was not due until the 20th day of April 1894 and that suit was brought thereon on the 20th day of April 1897 and that there was a new promise to pay the note for $2500 and interest at 6 % dated the 20th day of April 1892 made within three years before the bringing of this suit.
4. The plaintiff says that it is true that the consideration for the promissory notes sued upon in his declaration was the conveyance to the defendant of the Stansbury Mill property located in
8 Carrollton, Mississippi but that the subscription for $9000 worth of the bonds of the Delta Cotton and Wollen Mill and Land Company was a separate and distinct transaction.
5. The plaintiff says that the $9,000 worth of the bonds of the Delta Cotton and Wollen Mill and Land Company have never been tendered to him.

S. HERBERT GIESY,
Attorney for Plaintiffs.

Rejoinder & Demurrer.

Filed February 8, 1898.

In the Supreme Court of the District of Columbia.

EUGENE C. GORDON
vs.
ARTHUR E. RANDLE. } At Law. No. 40958.

1. The defendant joins issue upon the plaintiff's replication to the third plea in the above-entitled cause.
2. The defendant says that the plaintiff's fourth and fifth replications are bad in substance.

J. J. DARLINGTON,
Attorney for Defendant.

NOTE.—Among the matters of law intended to be argued in support of the foregoing demurrer are, that it is immaterial whether or

not the subscription for nine thousand dollars worth of the bonds of the Delta Cotton and Wollen Mill and Land Company was a separate and distinct transaction from conveyance to the defendant of the mill property, and that it is, also, immaterial whether nine thousand dollars worth of the bonds of said company were tendered to the plaintiff.

9 April Term, 1898.

Proceedings before the supreme court of the District of Columbia, holding a circuit court, division No. 2, and a special term, in and for said District, commencing on the fifth day of April, 1898.

TUESDAY, *April* 5, 1898.

The court opens at ten o'clock a. m., by proclamation of the marshal, pursuant to the rule of court, by order of the Honorable Louis E. McComas, an associate justice of said court, who presided.

* * * * * * *

E. C. GORDON, Use, etc., Plaintiff,
vs.
ARTHUR E. RANDLE, Defendant. } At Law. No. 40958.

Upon hearing the defendant's demurrer to the fourth and fifth replication, it is by the court considered that the same be and hereby is sustained.

Joinder of Issue.

Filed April 12, 1898.

In the Supreme Court of the District of Columbia, the 12th Day of April, 1898.

EUGENE C. GORDON, for the Use of MARY G. Roper, Plaintiff,
vs.
ARTHUR E. RANDLE, Defendant. } No. 40958. At Law.

The plaintiff joins issue upon the defendant's fourth plea.

S. HERBERT GIESY,
Attorney for Plaintiff.

To J. J. Darlington, attorney for —.

Service of copy of above acknowledged this 12 day of April, 1898

J. J. DARLINGTON,
Attorney for Defendant.

10 *Motion to Produce.*

Filed October 30, 1900.

In the Supreme Court of the District of Columbia.

EUGENE C. GORDON, for the Use of MARY G. Roper,
vs.
ARTHUR E. RANDLE.
} At Law. No. 40958, Docket —.

Now comes the plaintiff by his attorney and moves the court to order the defendant Arthur E. Randle to produce on the trial the charter evidencing the incorporation of the Delta Cotton and Wollen Mill and Land Company; the bonds of said company amounting to nine thousand dollars ($9,000) alleged to have been tendered to the plaintiff and the deed conveying the property purchased by the defendant from the plaintiff to the Delta Cotton and Wollen Mill and Land Company.

S. HERBERT GIESY,
Attorney for Plaintiff.

To J. J. Darlington, attorney for defendant:

Please take notice that I will call up the above motion for action before Justice Bradley in circuit court No. 2 on Thursday, the 1st day of November, 1900.

S. HERBERT GIESY,
Attorney for Plaintiff.

Service of copy of above motion and notice acknowledged this 29th day of October, 1900.

J. J. DARLINGTON,
J. D. S.,
Attorney for Defendant.

Memorandum.

November 16, 1900.—Verdict for defendant.

11 Supreme Court of the District of Columbia.

FRIDAY, *December* 14, 1900.

Session resumed pursuant to adjournment, Mr. Justice Bradley, presiding.

* * * * * * *

EUGENE C. GORDON, for the Use of MARY G. Roper, Plaintiff,
vs.
ARTHUR E. RANDLE, Defendant.
} No. 40958. At Law.

This cause coming on to be heard upon the plaintiff's motion for a new trial, and the same being heard, it is considered that said

motion be, and the same is hereby overruled, and judgment on verdict is ordered: Therefore, it is considered that the plaintiff take nothing by his suit, that the defendant go thereof without day, and recover against the plaintiff his costs of defense to be taxed by the clerk, and have execution thereof.

Whereupon, the plaintiff in open court prays an appeal to the Court of Appeals of the District of Columbia, which is allowed, and the bond for costs fixed at one hundred ($100) dollars, with leave to said plaintiff to deposit fifty ($50) — in the registry of the court in lieu thereof.

Memorandum.

January 7, 1901.—$50 deposited by plaintiff in lieu of appeal bond.

12 *Notice of Time of Settlement of Bill of Exceptions.*

Filed January 16, 1901.

In the Supreme Court of the District of Columbia.

EUGENE C. GORDON, for the Use of MARY G. Roper, vs. ARTHUR E. RANDLE. } At Law. No. 40958.

Please take notice that on Monday the 28th day of January 1901 I will present the bill of exceptions to the court for settlement before Justice Bradley in circuit court No. 2.

S. HERBERT GIESY,
Attorney for Plaintiff.

To J. J. Darlington, attorney for defendant.

Service acknowledged this 17th day of January, 1901.

J. J. DARLINGTON,
For Defendant.

Stipulation as to Filing Bill of Exceptions.

Filed January 28, 1901.

In the Supreme Court of the District of Columbia.

EUGENE C. GORDON, for the Use of MARY G. Roper, vs. ARTHUR E. RANDLE. } 40958. Law.

It is hereby stipulated that the bill of exceptions in the above cause as prepared by and on behalf of plaintiff and not agreed to on behalf of the defendant was tendered to the trial court on this 28th

day of January, 1901, for settlement and that the same may
13 be filed in the cause as having been so tendered without prejudice to the rights of either party.

S. HERBERT GIESY,
Attorney for Plaintiff.
J. J. DARLINGTON,
Attorney for Defendant.

Memorandum.

January 28, 1901.—Bill of exceptions filed as per stipulation.

Order for Preparation of Record.

Filed February 7, 1901.

In the Supreme Court of the District of Columbia.

EUGENE C. GORDON
vs.
ARTHUR E. RANDLE. } At Law. No. 40958, Docket 45.

The clerk will please prepare the record for appeal in the above-entitled cause and include therein

April 27, 1897.—Amended declaration.
May 10, 1897.—Motion to strike amended declaration from the files.
May 28, 1897.—Motion to strike out overruled.
June 12, 1897.—Pleas to declaration and affidavit of defendant.
Dec. 15, 1897.—Joinder in issue on 1st and 2nd pleas and replication.
Feb'y 8, 1898.—Joinder in issue on plaintiff's replication to 3rd plea and demurrer to 4 & 5 replication.
April 5, 1898.—Demurrer sustained.
14 April 12, 1898.—Joinder in issue.
Oct. 30, 1900.—Motion to require defendant to produce papers for trial.
Nov. 16, 1900.—Verdict.
Dec. 14, 1900.—Motion for new trial overruled and judgment on verdict for def't for costs, appeal noted and bind fixed at $100 or in lieu thereof $50 cash.
Jan'y 7, 1901.—$50 deposit.
" 17, 1901.—Notice of time of settlement of bill of exceptions.
" 28, 1901.—Stipulation as to filing bill of exceptions.
" 28, 1901.—Bill of exceptions tendered to court and filed as per stipulation.

S. HERBERT GIESY,
Attorney for Plaintiff.

Service of copy of above order acknowledged this 6th day of February, 1901.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 18, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this record, in cause No. 40958, at law, wherein Eugene C. Gordon, for the use of Mary G. Roper, is plaintiff, and Arthur E. Randle is defendant, as the same remains upon the files and of record, in said court.

15 In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 23d day of February, A. D. 1901.

Seal of Supreme Court of the District of Columbia.

JOHN R. YOUNG, *Clerk.*

District of Columbia supreme court. No. 1063. Eugene C. Gordon, for the use of Mary G. Roper, appellant, *vs.* Arthur E. Randle. Court of Appeals, District of Columbia. Filed Feb. 23, 1901. Robert Willett, clerk.

16 In the Court of Appeals of the District of Columbia.

EUGENE C. GORDON, for the Use of MARY G. ROPER, *vs.* ARTHUR E. RANDLE. } No. 1063.

To the Court of Appeals of the District of Columbia:

Your petitioner states as follows:

1. That he is the plaintiff in the above-entitled cause and that he directed his attorney S. Herbert Giesy to note and perfect an appeal from the judgment rendered against him in circuit court No. 2, Mr. Justice Bradley presiding on the 14th day of December 1900.

2. That the seventh day of January 1901 his attorney deposited with the clerk of the supreme court of the District of Columbia the fifty dollars required to be deposited in lieu of bond; that on the same day his attorney moved that the October term be prolonged by adjournment in order to prepare the bill of exceptions in accordance with the rules of the supreme court of the Dist. of Columbia which motion was overruled on the ground that the October term had ended on the 31st day of December 1900 although rule 3 of the said supreme court prescribes that the terms of the circuit court shall begin on the first Tuesday of October, January and April and Tuesday the 1st day of January 1901 was New Year's day and a legal holiday in the District of Columbia and the first Tuesday in January which was a *dies juridicus* was the eighth day of January 1901 and in recognition of this fact the minutes of cir-

cuit court No. 2 Mr. Justice Bradley presiding for January 1, 1901 contain the following:

"This being a legal holiday, the attendance of the persons reporting is noted and those not excused from serving are excused until tomorrow morning at 10 o'clock without qualifying."

Equity court No. 1 Mr. Justice Hagner presiding held no
17 session of court on January 1st, 1901 but began the January term on the first Wednesday of January 1901 instead of the first Tuesday.

3. That in accordance with the rules of the supreme court of the District of Columbia on the 17th day of January 1901 he submitted to the opposing counsel the bill of exceptions proposed to be settled and gave notice that on the 28th day of January 1901 he would ask the court to settle the bill of exceptions; that on the 28th day of January 1901 the bill of exceptions was presented to Mr. Justice Bradley sitting in circuit court No. 2 who declined to settle the same unless the defendant consented, as the October term had not been prolonged; that counsel for defendant declined to consent to the bill of exceptions being settled and your petitioner was forced to perfect his appeal to this court without any bill of exceptions.

4. That the following language of section 2 of rule 54:

"SEC. 2. The bill of exceptions must be settled before the close of the term, which may be prolonged by adjournment in order to prepare it, but not longer than thirty-eight days, exclusive of Sundays, save in case of a trial begun during a term but not concluded until after the expiration of the term, in which case the trial justice may extend the term in his discretion in order to prepare a bill of exceptions"

imposes a duty on the court to settle a bill of exceptions and does not grant a discretion to settle or not to settle a bill of exceptions.

That heretofore it has been the custom to enter general orders extending the term for the settlement of bills of exceptions in the following or equivalent language:

"It is ordered that the January term 1898 be and hereby is prolonged for thirty days in the above-entitled cases for the purpose of settling bills of exceptions" as will be seen by reference to

Law	Minutes	36	page	306
"	"	37	"	405
"	"	38	"	123
"	"	38	"	407
"	"	41	"	120

18 5. That without the bill of exceptions your petitioner cannot have the rulings of the court below reviewed by this honorable court which may result not only in his pecuniary loss but in injury to his personal reputation and being without other remedy.

He therefore prays that the writ of mandamus may issue from this honorable court requiring Andrew C. Bradley, an associate

justice of the supreme court of the District of Columbia, to settle the bill of exceptions in this cause.

EUGENE C. GORDON.

I do solemnly swear that I have read the petition by me subscribed, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

EUGENE C. GORDON.

Subscribed and sworn to before me this 2nd day of March 1901.

ROBERT WILLETT, *Clerk.*

In the Court of Appeals of the District of Columbia.

EUGENE C. GORDON, for the Use of MARY G. ROPER, vs. ARTHUR E. RANDLE. } No. 1063.

Personally appeared before me Robert Willett, clerk of the Court of Appeals, S. Herbert Giesy who being first duly sworn, deposeth and saith that he is the attorney for the plaintiff in the above-entitled cause that on the seventh day of January 1901 he deposited with the clerk of the supreme court of the District of Columbia the fifty dollars directed by the court to be deposited in lieu of bond and made a motion in circuit court No. 2, Mr. Justice Bradley
19 presiding that the term be prolonged for the settlement of the bill of exceptions. That he believed at that time that the eighth of January 1901 was the beginning of the January term as Tuesday the first day of January 1901 was a legal holiday and a *dies non juridicus.* That when the bill of exceptions was presented to the court on the 28th day of January 1901 Mr. J. J. Darlington the attorney for the plaintiff stated that he had no objection to the bill of exceptions except that he did not think it complied with the rules of the Court of Appeals in that a large part of the evidence was given in full but the court itself raised the point that the term had not been extended and asked Mr. Darlington if he consented to the settlement of the bill under those circumstances when Mr. Darlington declined to do so without first having the consent of his client; that afterwards on the first of February 1901 Mr. Darlington wrote deponent that his client would not assent to his allowing the bill of exceptions to be settled by consent.

S. HERBERT GIESY.

Sworn and subscribed to before me this 2d day of March, 1901.

ROBERT WILLETT, *Clerk.*

(Endorsed:) No. 1063. In the Court of Appeals of the District of Columbia. Eugene C. Gordon for the use of Mary G. Roper, appellant, *vs.* Arthur E. Randle. Petition for writ of mandamus to require Andrew C. Bradley an associate justice of the S. C. of D. C. to settle the bill of exceptions. Court of Appeals, District of Columbia. Filed Mar. 2, 1901. Robert Willett, clerk.

20 THURSDAY, *March 7th, A. D.* 1901.

EUGENE C. GORDON, for the Use of MARY G. ROPER,
Appellant,
vs.
ARTHUR E. RANDLE. } No. 1063.

The petition for writ of mandamus to require Andrew C. Bradley and associate justice of the supreme court of the District of Columbia to settle the bill of exceptions in the above-entitled cause was submitted to the consideration of the court by Mr. S. Herbert Giesy in support of petition.

FRIDAY, *March 8th, A. D.* 1901.

EUGENE C. GORDON, for the Use of MARY G. ROPER,
Appellant,
vs.
ARTHUR E. RANDLE. } No. 1063.

It is ordered by the court that counsel be heard orally on petition for mandamus in the above-entitled cause on Tuesday March 12, 1901.

21 TUESDAY, *March 12th, A. D.* 1901.

EUGENE C. GORDON, for the Use of MARY G. ROPER,
Appellant,
vs.
ARTHUR E. RANDLE. } No. 1063.

The petition for writ of mandamus to require Andrew C. Bradley an associate justice of the supreme court of the District of Columbia, to settle the bill of exceptions in the above-entitled cause, was argued by Mr. S. Herbert Giesy in support of petition, and by Mr. J. J. Darlington in opposition thereto.

EUGENE C. GORDON, for the Use of MARY G. ROPER,
Appellant,
vs.
ARTHUR E. RANDLE. } No. 1063

On consideration of the appellant's petition for a writ of mandamus to require Andrew C. Bradley an associate justice of the supreme court of the District of Columbia, to settle the bill of exceptions in the above-entitled cause, it is by the court now here ordered that said petition be, and the same is hereby, denied, and that the petition be, and the same is hereby, dismissed, with costs.

Per MR. CHIEF JUSTICE ALVEY.

March 12, 1901.

22 TUESDAY, *April 9th, A. D.* 1901.

EUGENE C. GORDON, for the Use of MARY G. ROPER, Appellant, *vs.* ARTHUR E. RANDLE. } No. 1063.

Mr. S. Herbert Giesy of counsel for the appellant, submitted to the court a motion for a writ of error to remove said cause to the Supreme Court of the United States, from an order of this court entered herein on March 12, 1901, overruling petition for writ of mandamus; whereupon it is ordered by the court that said writ be, and the same is hereby, allowed on giving bond in the sum of three hundred dollars.

23 UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between Eugene C. Gordon, for the use of Mary G. Roper, appellant, and Arthur E. Randle, appellee, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 9th day of April, in the year of our Lord one thousand nine hundred and one.

Seal Court of Appeals, District of Columbia.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

24 FRIDAY, *January 17th, A. D.* 1902.

EUGENE C. GORDON, for the Use of MARY G. ROPER, Appellant, *vs.* ARTHUR E. RANDLE. } No. 1063.

The bond on the writ of error to the Supreme Court of the United States was submitted to the court for approval by Mr. S. Herbert

Giesy; whereupon it is ordered by the court that said bond be, and the same is hereby, approved and ordered filed.

25 Know all men by these presents, that we, Eugene C. Gordon, as principal, and Mary G. Roper and The United States Fidelity and Guaranty Company a Maryland corporation, as sureties, are held and firmly bound unto Arthur E. Randle in the full and just sum of three hundred dollars to be paid to the said Arthur E. Randle his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 17 day of January, in the year of our Lord one thousand nine hundred and two.

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said court, between Eugene C. Gordon to the use of Mary G. Roper, and Arthur E. Randle a judgment was rendered against the said Eugene C. Gordon to the use of Mary G. Roper and the said Eugene C. Gordon having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Arthur E. Randle citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington within 30 days from the date thereof,

Now, the condition of the above obligation is such, that if the said Eugene C. Gordon to the use of Mary G. Roper shall prosecute the writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

EUGENE C. GORDON. [SEAL.]
MARY G. ROPER. [SEAL.]
THE UNITED STATES FIDELITY AND GUARANTY CO., [SEAL.]
By J. S. SWORMSTEDT, *Attorney-in-fact.*

[Seal of U. S. Fidelity and Guaranty Co.]

Sealed and delivered in the presence of—
—— ——.

Approved by—
R. H. ALVEY, *Ch. Justice.*

[Endorsed:] No. 1063. Eugene C. Gordon for the use of Mary G. Roper appellant *vs.* Arthur E. Randle. Bond on writ of error to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Jan. 17, 1902. Robert Willett, clerk.

26 UNITED STATES OF AMERICA, *ss:*

To Arthur E. Randle, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Eugene C. Gordon, for the use of Mary G. Roper, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Richard H. Alvey, Chief Justice of the Court of Appeals of the District of Columbia, this 17th day of January, in the year of our Lord one thousand nine hundred and two.

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted, Jan. 18, 1902.

J. J. DARLINGTON,
Att'y for Defendant in Error.

27 Court of Appeals of the District of Columbia, January Term, 1902.

EUGENE C. GORDON, for the Use of MARY G. ROPER, Appellant,
vs.
ARTHUR E. RANDLE.
} No. 1063.

The clerk in preparing the transcript for the Supreme Court of the United States will please certify the following:

The transcript of record as received from the supreme court of the D. C.

Petition for writ of mandamus and proceedings thereunder including dismissal.

Prayer for writ of error and order allowing same.

S. HERBERT GIESY,
Attorney for Appellant.

(Endorsed:) No. 1063. Court of Appeals of the District of Columbia. Order for transcript of record to Supreme Court United States. Court of Appeals, District of Columbia. Filed Jan. 20, 1902. Robert Willett, clerk.

28 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing is a true and complete transcript of the record and all proceedings in said Court of Appeals in the case of Eugene C. Gordon for the use of Mary G. Roper, appellant, *vs.* Arthur E. Randle, No. 1063, January term, 1902, as the same remains upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 28 day of January, A. D. 1902.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 18,385. District of Columbia Court of Appeals. Term No. 229. Eugene C. Gordon for the use of Mary G. Roper, plaintiff in error, *vs.* Arthur E. Randle. Filed January 29, 1902.